



Utah Residential Mortgage Practices Act

by Ted Boyer
Division Director

During the 2000 Legislative Session, House Bill 107, the Utah Residential Mortgage Practices Act (the "Act") was passed in the House by a vote of 63 to 1 and in the Senate by a vote of 27 to 0. Representative Gerry A. Adair sponsored

the bill. Representative Adair is both a real estate broker and an appraiser. The Utah Division of Real Estate has been assigned the responsibility of administering the Act.

The Act follows a registration model rather than a licensing model. This means that companies and individuals will register with the Division but will not receive a license. Applicants will not be required to have taken pre-registration education or to have taken a competency examination. Applicants will be required to be fingerprinted and to submit to a criminal background check. They will also be required to obtain a surety bond (\$10,000.00 for individuals and \$25,000.00 for entities), obtain a letter of credit or deposit assets of equivalent value. Individuals will be required to register beginning July 1, 2000 and those entities who have current notifications filed with the Department of Financial Institutions will be required to register with the Division on July 1, 2001.

Unless a person is exempt under the Act, a person may not transact the business of residential mortgage loans in Utah without being registered under the Act. The business of residential mortgage loans is defined in the

Act as making or originating a residential mortgage loan for compensation; directly or indirectly soliciting, processing, placing or negotiating a residential mortgage loan for another or; rendering services related to the origination, processing or funding of a residential mortgage loan including: taking applications, obtaining verifications and appraisals, and communicating with the borrower and lender.

The following, among others, are exempt from the registration requirement: the federal government, a state or political subdivision of a state; an agency created by a governmental entity such as FHA, Fannie Mae, RTC, etc.; a depository institution, its affiliates or employees; attorneys; and certain individuals acting on their own behalf.

A Residential Mortgage Regulatory Commission will be created. The Commission will consist of five members appointed by the Executive Director of the Department of Commerce with the approval of the Governor. Two members will be industry members with at least three years of residential mortgage lending experience. Two members will be from the gen-

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Mortgage Practices Act

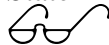
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eral public and the fifth member will be the commissioner of the Department of Financial Institutions or the commissioner's designee. Except for the Department of Financial Institutions representative, each will serve for a term of four years unless otherwise determined by the Governor. The Commission will concur with the Division on registration and disciplinary matters and shall advise the Division concerning the administration and enforcement of the Act.

The Act specifies that certain prohibited conduct violates the Act and subjects the registrant to disciplinary action, including a fine, revocation, suspension or probation. Such activities as charging excessive fees, giving things of value for referrals, attempting to influence the independent judgment of appraisers and making false statements or representations to induce a lender to extend credit are all prohibited by the Act.

If you, or someone you know, would like to apply to serve on the Residential Mortgage Regulatory Commission, please contact the Division.

You may read House Bill 107 by going to the State Legislature web site at www.le.state.ut.us.



Continuing Education

If you want to know the most current continuing education courses available, you can access the Division home page and get the list from there. The information on how to contact the course providers is included, with the Internet address for the provider (if they have given it to us), giving you the potential to get the most current dates and places for continuing education courses (provided they've updated their own page). The URL is www.commerce.state.ut.us. This will take you to the Department of Commerce home page. From there you can access the Division of Real Estate, and select the Real Estate Continuing Education Course list from the menu.

Utah Brokers Beware

Since the first part of the year, Utah brokers' mailboxes have been filled with information from a company by the name of *Pro-teck Services, Ltd.*, who describes themselves as a "national mortgage servicing company." This company is making an offer to Utah brokers for a way to pick up some extra cash by providing "valuation services" for the company's clients.

The company is asking you to perform "market analyses" and "asset valuation reports," and is offering to pay up to \$50.00 for each report. This would seem like a good way for a broker to pick up some extra money, but there's one major problem: it's against the law!



No matter what term it is couched under (market analyses, valuation report, CMA, opinion of value, etc.), if it is used for lending or credit purposes, it is still an *appraisal*. And the appraiser statute is very clear that anyone providing any kind of value on a piece of real property, needs to have a state appraiser license or certification.

A Utah broker or sales agent is exempt from appraiser licensing under a very narrow and well-defined parameter which states that the appraiser law does not apply to: "a real estate broker or sales agent as defined by Section 61-2-2 licensed by this state who, in the ordinary course of his business, gives an opinion regarding the value of real estate to a potential seller or third party recommending a listing price of real estate; or to a potential buyer or third party recommending a purchase price of real estate." In other words, you can do an "appraisal" on a piece of property that you are (or may be) taking a listing on, and also give an estimate of value to a buyer/client who might be purchasing a piece of property. But outside of these two situations, you may not do an appraisal.

Pro-teck Services has been contacted by the Division and informed that their offer violates the state appraiser laws.

Real Estate Licensee Safety Training

by Reed M. Richards,
Chief Deputy Attorney General

In April 1997 Michael Jensen, a Utah State Prison parolee, raped a woman real estate agent in a vacant home in Riverton. Jensen lured the agent into showing him a series of vacant homes on the pretext of buying a house. Jensen's plan was well-thought out, and he attacked the agent when they were in a property that met his criteria of being vacant and isolated in a semi-rural area.

In June 1997 the victim in this case and two real estate professionals of her victim support group came to the Utah Attorney General's Office with a plea of how to protect themselves and what to do to prevent further predation on members of their profession. This resulted in the development of a safety and crime prevention course designed to address the unique characteristics of the real estate profession.

The very circumstances of the real estate professional's occupation is an opportunity for the sexual predator, thief, and/or drug abuser to victimize the innocent. Every day real estate practitioners put themselves at risk. They are required to deal with strangers who seek professional help to buy and/or sell property; to meet with strangers, alone, at vacant properties, usually at the hour of the stranger's choosing; to transport that stranger in their car; and to conduct open houses with an invitation for every stranger (or strange person) to walk through the door. Sadly enough, additional examples of sexual assault, attempted sexual assault, and theft against real estate practitioners came to light during the development and then the teaching of this course. Most of these incidents went unreported in the real estate community so most practitioners did not know the risks they faced.

During the formulation of this course, it became obvious that in addition to personal safety concerns, the real estate practitioner had at least an implied obligation to protect the property of his/her clients. Several incidents were discovered of theft of prescription drugs and valuable objects from homes during open houses hosted by real estate professionals. And upscale open houses are prime targets for the professional burglar to "case" for valuables and easy entry points, and then to forcibly enter the house at a later time when no one is around.

The resultant course developed cooperatively by the Attorney General's Office, the Utah Division of Real Estate, and a committee of real estate



professionals is designed to increase the professional's awareness of the inherent risks in the real estate sales profession and to give safety tips, advice, and procedures to follow to reduce that risk. The course also provides recommendations to reduce the risk of theft and damage to the property of the real estate professional's clients. Much of the information in the course is common sense safety tips that can be used not only by real estate professionals but by their families and the general public to prevent crime and to avoid being victimized.

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Utah Real Estate News

Purpose: To provide licensees with the information and education they need to be successful in competently serving the real estate consumer

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Licensee Safety Training

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In addition to personal safety and property protection for clients, the third goal of the course is to create a crime prevention partnership between law enforcement and the real estate industry for the benefit of the community as a whole. The real estate sales profession can be a potent force for crime prevention. There are 10,000 licensed active professionals in the real estate sales profession armed with cellular telephones roaming communities throughout Utah in comparison to less than 3100 sworn peace officers in the entire state. The course gives tips on what to look for, who to call, and what to do to report a crime or suspicious circumstances. The professional who attends the training is provided the telephone number of every law enforcement agency in Utah plus the number of victim service units and victim counseling services.

The response to the course from the real estate industry has been phenomenal to the point that demand for training classes has strained the instructor resources. But every effort is being made to accommodate the demand. The response has been so good that recently the Utah Real Estate Commission mandated that the course be included in the core curriculum for licensees. This means that the course is required of all licensees and applicants to get a real estate license or to maintain a current license.

The course has been successful in raising the awareness of real estate practitioners to the dangers in the real estate profession, and to provide the education not only to minimize the risk to the practitioner's personal safety but to minimize the risk to the property of the practitioner's client. ☀

Other Fees from a Real Estate Transaction?

Some Utah licensees seem to be unclear as to exactly what the law is regarding receiving fees (in addition to the sales commission) in a real estate transaction.

Administrative Rule 162-6.1.10 states that: "a licensee may not receive a referral fee from a lender." This rule is very straightforward and leaves no doubt that you may not accept any kind of a referral fee from a lender, whether disclosed or not.

Rule 162-6.2.10 deals with disclosure of other fees. It states: "If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction." What types of fees does this mean? Well, the rule says "any type of fee."

Perhaps the listing office is giving you a bonus (a vacation trip, Jazz tickets, etc.) above and beyond the originally agreed upon commission split for having sold the property. This needs to be disclosed. Or perhaps you (the agent) are also the owner of a landscaping business, and the buyer is paying you to put a fence around the property before he will close the transaction. This should be disclosed. Any additional money you might be making, by virtue of the transaction, should be disclosed.

Where's the best place to make this disclosure? It needs to be in writing, so it should be in the REPC, perhaps on an addendum where both buyers and sellers can see the disclosure.

Just remember that everyone involved in a transaction has a right to know and understand who will be benefitting from the transaction. That is the reason for the disclosures.

TRUST ACCOUNT SEMINAR

The seminar will cover the Administrative Rules for trust accounts established under the Utah Real Estate license law.

Location: 2970 East 3300 South, Salt Lake City

Dates: May 5, June 2, July 7, Aug. 4

Time: 9:00 am to 12:00 noon

Credit: 3 hours continuing education

You **MUST PREREGISTER** by sending \$5 with your name, address, phone number and license number to:

Division of Real Estate

PO Box 146711

Salt Lake City, UT 84114-6711

You will receive a phone call confirming your registration the week of the seminar.



\$5.4 Million Awarded in Fraud Case

Provo jury finds that former real estate agents, brokerage firm inflated Orem building's price

by Ray Rivera

The Salt Lake Tribune, March 1, 2000

A Provo jury has levied a \$5.4 million verdict against two former real estate agents and a brokerage firm for defrauding a client in a price-hiking scheme.



Gilbert M. Turner and Richard M. Knapp, who were licensed agents for the same Salt Lake broker, were accused of inflating the price of a building by \$70,000 before selling it to a Provo holding company in 1992.

After a five-day trial that ended Monday in 4th District Court, an eight-person jury awarded Diversified Holdings Co. of Provo \$286,336 for fraud and negligence and \$5.1 million in punitive damages against the former agents and The Haws Companies Real Estate Services.

"This jury was interested in sending a message to these guys and to the real estate industry as a whole," said attorney Blake Atkin of Atkin & Lilja, which represented Diversified in a case that took seven years to reach trial because of a long evidence-gathering period and numerous delays.

According to court records and investigative documents from the Utah Real Estate Commission, Turner acted as an agent to sell a three-story building in Orem owned by First Security Bank to Diversified in 1992. But the agent lied to the company when he said the bank would not consider an offer of less than \$750,000 for the property and that it already had another offer for that price.

He also claimed that Knapp had an option to buy the building for \$770,000, according to commission records.

Turner further told the company it would have to reimburse Knapp for a \$5,000 non-refundable deposit on the building and pay him an additional \$10,000 on top of his option price.

In fact, Knapp's option was only for \$700,000 and his deposit was refundable.

"It is useless to
desire more time if
you are already
wasting what little
you have."

—James Allen

Mortgage Brokers to Be Regulated

A New Commission to be Appointed

The Governor has signed the new Utah Residential Mortgage Practices Act which requires mortgage brokers in the state of Utah to now be registered with the Division of Real Estate. Depository institutions and their affiliates are exempt under the Act.

Part of the act allows for the creation of the Residential Mortgage Regulatory Commission. The Commission will be comprised of five members: two from the industry, two from the general public, and either the commissioner from the Department of Financial Institutions or someone he has designated to act on his behalf. The two industry members must have at least three years of residential mortgage lending experience.

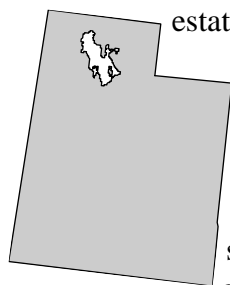
This Commission will be appointed by the Executive Director of the Department of Commerce with the approval of the Governor. If you or anyone you know would be interested in serving on this Commission, please notify Ted Boyer, Director of the Division of Real Estate at 530-6747.



New Commissioners to Be Appointed

The end of the fiscal year (June 30th) will end Commissioner Richard Moffat's and Commissioner Max Thompson's terms on the Utah Real Estate Commission. Dick's input and insight, especially in the area of real estate development, has been greatly appreciated. He has made considerable contribution to the focus and philosophy of the Commission, and his unique viewpoint will long be recognized and well remembered. Max has brought a wealth of experience and years of public service to the Commission. Northern Utah has been well represented by Max. He has been instrumental in revising rules on continuing education and license reciprocity. He will also be missed.

Two positions will be available on the Commission. The prospective commissioners must have at least five years of experience in real estate and must hold an active broker or sales agent license. The new commissioners must not come from the counties of Utah, Summit, or Uintah, as no more than one commissioner may come from a single county. This is a gubernatorial appointment for the term of four years.



The Commission meets at least monthly and receives a per diem and necessary expenses. The Commission makes administrative rules regarding licensing, education, record keeping, handling of funds by licensees, property management, standards of conduct and it also conducts administrative hearings relating to licensing or conduct of licensees and education providers.

Anyone interested in being considered for this appointment should contact Ted Boyer, Director of the Division of Real Estate at 530-6747.

Fannie Mae Identifies Reasons for Community Growth

(WASHINGTON) – The Fannie Mae Foundation has released a survey of the top 10 influences on American cities over the past half century, naming the interstate highway system as the greatest single factor in developing new communities. The foundation also has released a survey of futurists on what they believe will be key growth factors in the next 50 years.

Here is the Fannie Mae list of factors in the past 50 years:

1. The 1956 Interstate Highway Act and the dominance of the automobile.
2. FHA mortgage financing and subdivision regulation.
3. De-industrialization of central cities.
4. Urban renewal: downtown redevelopment and public housing projects.
5. Levittown and other mass-produced suburban tract housing.
6. Racial segregation and job discrimination in cities and suburbs.
7. Enclosed shopping malls.
8. Sunbelt-style sprawl.
9. Air conditioning.
10. Urban riots of the 1960's.

Here is Fannie Mae's speculation on growth factors in the next 50 years:

1. Growing disparities of wealth.
2. Suburban political majority.
3. Aging of the baby boomers.
4. Perpetual "underclass" in central cities and inner-ring suburbs.
5. "Smart Growth:" environmental and planning initiatives to limit sprawl.
6. The Internet.
7. Deterioration of the "first-ring" post - 1945 suburbs.
8. Shrinking household size.
9. Expanded superhighway system of "outer beltways" to serve new-edge cities.
10. Racial integration as part of the increasing diversity in cities and suburbs.

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Real Estate Disciplinary Sanctions



COLES, BRUCE H., Inactive Sales Agent, Provo. Application for renewal denied based on his testimony regarding the allegations contained in an Emergency Cease and Desist Order issued by the Division of Securities, including his admission that he made false and misleading statements to investors. Mr. Coles has requested Agency Review by the Executive Director of the Department of Commerce.

CORRY, STEVEN D., Principal Broker, Steve Corry Real Estate, Cedar City. Consented to pay a \$750.00 fine based on failing to have a current property management agreement in effect with a landlord client, and on breaching a fiduciary duty to that client by failing to provide a written itemization of deductions from tenants' deposits to the landlord client and to the tenant in all instances. Mr. Corry maintains that each tenant was informed either orally or in writing about deductions from his deposit. #RE33-99-06.

CROCKETT, SHIRLIE R., Sales Agent, Roy. Conditional license revoked on October 27, 1999 after the criminal background check required of new sales agents revealed that she had failed to disclose past criminal history. #REFP99-21.

DONALDSON, COREY and **SENTINEL PROPERTY CONCEPTS**, Ogden. Cease and Desist Order issued March 8, 2000 prohibiting acting as a broker without a license, including, but not limited to, finding tenants and placing them in sellers' homes, providing "Lease Option" forms to sellers to use in selling their homes, and advertising for potential tenant/buyers to lease sellers' homes. #RE99-10-18.

HECK, GARY C., Sales Agent, Layton. Conditional license revoked on February 24, 2000 after the criminal background check required of new sales agents revealed that he had failed to disclose guilty pleas entered to two Class C Misdemeanor charges. #REFP20-04.

HEESE, FRED L., Sales Agent, Salt Lake City. Application for sales agent license granted on probationary status if he completes payment of his fine in a misdemeanor case. As a condition of license probation, he will be required to submit written acknowledgement from all principal brokers with whom he licenses during the probationary period that he has informed the broker of his past criminal history.

JOHNSON, AMAL (AMY), Sales Agent, Wardley GMAC, 45th South Office, Salt Lake City. Consented to pay a \$500.00 fine and take a remedial education course, based on receipting an earnest money check she had not actually received, trusting the buyer to

bring the funds in the next few days. The transaction failed, and the seller claimed the earnest money, which was never received. In mitigation, Ms. Johnson paid the seller the earnest money out of her own funds after the seller filed a complaint against her. #RE97-10-14.

KOLL, SHERI L., Inactive Sales Agent, St. George. Application for reinstatement approved on probationary status based on a conviction for D.U.I. She may not activate her license until she has fully paid her fine, completed her community service, and been released from criminal probation.

KRONEBERGER, JEFFERY A., Principal Broker, Westfield Real Estate JC, Springville. Consented to pay a \$350.00 fine, based on handling the showing of a home in an incompetent manner by allowing the buyers and an inspector to remain inside the home after he left. In mitigation, although the sellers had possessions stored in the home, no one was living in the home, no damage was done to the home and nothing was taken from the home. Respondent maintains in further mitigation that the buyers had previously met the sellers, and the inspector was never on the roof of the home as alleged by the sellers. #RE99-07-20.

LANDEEN, COREY S., Sales Agent, Logan. License application granted on probationary status for two years.

PE'A, RACHEL, Sales Agent, Salt Lake City. Conditional license revoked on February 7, 2000 after the criminal background check required of new sales agents revealed that she had failed to disclose a past Class C Misdemeanor conviction. After a post-revocation hearing, the Commission and the Director concluded that Ms. Pe'a did not intend to deceive the Division but that she nevertheless furnished incorrect information. Her license was reinstated on March 15, 2000, but immediately suspended for 90 days thereafter. Her license will be on probationary status until her next renewal. #REFP20-01.

PENNEY, JAKE D., formerly principal broker, Proactive Commercial and Investment, Salt Lake City. This publication previously reported that Mr. Penney's application for renewal was denied by the Utah Real Estate Commission. Mr. Penney then requested Agency Review. In an order dated March 27, 2000, The Executive Director of the Department of Commerce upheld the Real Estate Commission's denial of Mr. Penney's renewal.

REYNOLDS, DOUGLAS S., Sales Agent, Harbor Place Management Realty, Inc., Salt Lake City. Consented that his application for renewal would be denied effective March 15, 2000 and that he would not apply for a new license for at least four years, based on: 1) Owning an interest in a property management company with which he was licensed in violation of a Stipulation in Case RE96-01-15 ("the Stipulation"); 2) Altering dates on a change card after it had been signed by his principal brokers; 3) Signing on

Disciplinary Sanctions

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a one-signature-required trust account he knew was in violation of the Stipulation, which required all trust accounts on which he signed to be two-signature accounts; 4) Despite being disciplined in the past for transferring client funds to and from the trust account and an operating account, transferring funds in June, 1999 from the property management trust account to two other non-trust accounts on which he was the only signatory; and 5) After trust account checks had cleared the bank, requesting his principal broker to sign the checks so that he would appear to be in compliance with the Stipulation.

SCHELIN, MELISSA A., Sales Agent, Sandy. Conditional license revoked on February 22, 2000 after the criminal background check required of new sales agent revealed that she had failed to disclose pending Class B Misdemeanor charges. #REFP20-02.

SROCZYNSKI, TERESA J., Sales Agent, Heber City. Consented to a 180-day license suspension followed by a year probation, based on offering to purchase a property in her own behalf and, in order to borrow more than the list price and thereby obtain funds for both the purchase and the remodeling of the property, structuring her offer so that the sales price was substantially inflated and a \$75,000.00 seller carryback was to be forgiven. In mitigation, the seller did not accept the offer, and Ms. Sroczyński had only been licensed in Utah a few days at the time of the offer. #RE99-06-39

Appraiser Disciplinary Sanctions



FORREST, NATHAN L., State-Certified Residential Appraiser, Provo. Surrendered his certification, effective March 14, 2000, in lieu of continuing to respond to the Division's investigation of twelve complaints filed against him in Case Numbers AP97-06-06, AP97-11-16, AP98-09-06, AP98-10-25, AP98-12-21, AP99-04-11, AP99-08-12, AP99-08-14, AP99-08-22, AP99-09-06, AP99-12-13, and AP20-01-09.

GORDON, PETER W., State-Certified Residential Appraiser, Springville. Consented to pay a \$500.00 fine, based on an appraisal which violated USPAP by failing to discuss external obsolescent from an adjacent junk yard and by failing to discuss the potential environmental hazard from the junk yard. In mitigation, the appraisal was performed when Mr. Gordon was a registered appraiser and he has since taken the additional education, passed the examination, and become certified. #AP97-10-05.

JUMPER, BLAKE, Registered Appraiser, North Salt Lake. Consented to pay a \$500.00 fine and complete a USPAP course based on an appraisal which violated USPAP by failing to accurately verify and analyze comparable sales data or the listing price of the home, by failing to show how he valued the site, and by failing to maintain data in his files. In mitigation, the appraisal was performed in 1995, early in Mr. Jumper's career as an appraiser. #AP97-04-16.

OLIVERSON, KEVIN, State-Registered Appraiser, Cedar City. Surrendered his registration, effective April 15, 2000, in lieu of continuing to respond to the Division's investigation of six complaints filed against him in Case Numbers AP99-02-16, AP99-07-06, AP99-07-17, AP99-07-18, AP99-09-22, and AP99-09-24.

PETERSON, B. KENT, State-Certified Residential Appraiser, Orem. Surrendered his certification, effective March 14, 2000, in lieu of continuing to respond to the Division's investigation of two complaints filed against him in Case Numbers AP97-07-19 and AP99-09-21.

\$105 Million Settlement Announced in Cemwood Roofing Shakes Class Action

(SAN FRANCISCO) – A proposed \$105 million settlement has been reached between Weyerhaeuser Company Limited and plaintiffs in a class action lawsuit involving faulty roofing shakes manufactured by American Cemwood, a Weyerhaeuser subsidiary.

Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

The class action involves all persons who owned property on which Cemwood shakes were installed, and who live in one of the following states: Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky,

This class action does not include property in Colorado.

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"Choose well;
your choice is brief,
and yet endless."

~Johann Wolfgang von Goethe

Financing Fraud Alert

Have you ever been asked to falsify documents or information in order to help a buyer “qualify” for a mortgage? Have you ever asked your buyer and/or seller to sign two different Real Estate Purchase Contracts?

The Division is aware that the vast majority of licensees would not give in to such requests. To do so may lead not only to a loss of your license, but criminal penalties for bank fraud, as well.

Subsequent to an exhaustive investigation by the FBI, executives of a mortgage broker in the Milwaukee area have recently been indicted upon federal bank fraud charges. The firm also has had its license revoked by the Wisconsin Department of Financial Institutions for its involvement in a conspiracy to defraud lenders in connection with 40 fraudulent mortgage loans in Milwaukee.

A disturbing aspect of these developments is that there are indications that some mortgage brokers may be involved in perpetrating such frauds with the help, *either wittingly or unwittingly*, of other licensed professionals such as real estate appraisers and real estate licensees.

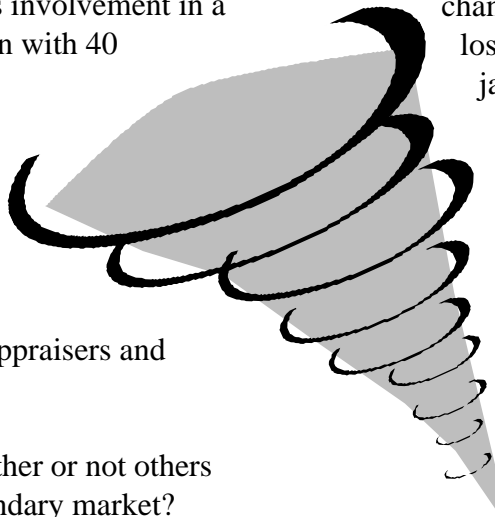
How does a real estate licensee know whether or not others may be perpetrating a fraud upon the secondary market? Well, here are a few red flags:

- Does a significant difference exist between the actual home value or the purchase price, and the listing agreement or the appraisal amount?
- Have you been asked to prepare and have signed more than one REPC with differing prices? Or with one indicating that the seller is taking back a second mortgage, when such is not the case, or it is to be “forgiven” immediately after closing? Or with one setting forth work credits for work that has never been done, and never will be?
- Are you aware that there are different sets of mortgage

documents, each having different terms or sales prices?

- Are you aware that a prospective buyer has been asked to misrepresent any information on a loan application?

The presence of any of the above signs should alert a competent real estate broker or sales agent that something less than “above board” is going on. However, these signs can be coated in such a fashion as to make them look attractive. And, after all, if you won’t participate in the scam, another broker will, right? Perhaps, but chances are, the broker is going to lose his license and maybe go to jail on top of it. And, if *you* do it, you may suffer the same fate.



Such schemes inevitably fall of their own weight.

Remember, **a licensee may not participate in drafting any documents, including closing statements, that misrepresent the exact agreement of the parties.**

Don’t let yourself be sucked into committing loan fraud. No commission is worth that!

Thanks, in part, to the Wisconsin Regulatory Digest, Volume 11, No. 2

In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Martin L. Dick
Edmund Moskos
George Telford
Jack C. Jensen

Sandy
Ogden
Centerville
Salt Lake City

New HUD Regs May Confuse Homebuyers on Inspections



This article appeared in the TRECAdvisor, the newsletter published by the Texas Real Estate Commission. Even though the article refers to Texas real estate forms, the article is applicable to Utah transactions.

Recently, the U.S. Department of Housing and Urban Development (HUD) promulgated a number of revised rules concerning appraisal procedures under the department's Homebuyer Protection Initiative (HPI). Under the new initiative, additional oversight of the homebuyer's appraisal process and further written details are being required for completion of Federal Housing Administration (FHA) loan applications. FHA appraisals must be completed before the agency will qualify homebuyers to receive an FHA insured mortgage from a lender. This allows lenders to offer mortgages to first-time buyers and others who may not qualify for conventional loans.

Confusion appears to have developed in some cases however, among a number of real estate agents, mortgage lenders, appraisers, and buyers regarding whether a property inspection is needed once a required FHA appraisal has been completed. Several instances have occurred in which buyers have been misinformed and left with the wrong impression that once an FHA appraisal is performed, an actual property inspection would only be redundant and unnecessary.

Texas Real Estate Commission contract forms encourage the buyer to have an inspection completed by a qualified

inspector before purchasing any home, regardless of whether FHA financing is being sought.

HUD addresses the necessity of real estate inspections in a special disclosure form for all potential buyers who are obtaining FHA appraisals. The form is titled "For Your Protection: Get a Home Inspection" (Form HUD-92564-CN; 8/99). This information discusses the importance of getting an independent home inspection before signing a contract with a seller, or after signing if the contract stipulates that the sale is contingent upon a satisfactory inspection. FHA mortgage lenders must present this form to all prospective customers who, in turn, must acknowledge having received the information by their signature.

An additional HUD form, "Notice to the Homebuyer" (Form HUD-92564-HS; 8/99), contains further important information that should be read carefully by consumers. Receipt of this form must also be acknowledged in writing by the potential buyer. Unfortunately, however, this form may lead to even more confusion. If an appraiser finds nothing wrong with a property in twelve different categories referenced on the form, a buyer might conclude that spending additional funds on a property inspection is not needed.

As HUD points out in its disclosures, FHA appraisals are different from home inspections. Even with an FHA appraisal, a true home inspection gives the buyer more detailed information. An FHA required appraisal is con-

ducted for the lender not the consumer, as a means of helping obtain approval for an insured loan. Lender appraisals are done to estimate the value of a house, assure that the house meets minimum FHA property standards, and confirm that the house is marketable.

In an inspection, a qualified independent inspector works on behalf of the buyer and takes an in-depth, unbiased look at a potential home to evaluate its physical condition, including structure, construction, and mechanical systems. The inspection report also identifies items that need to be repaired or replaced, and may provide information relating to the remaining useful life of major systems, equipment, and structure. Inspection reports give details on the condition of such items as exteriors, roofing, plumbing, electrical, heating, insulation and ventilation, air conditioning, and interiors.

Through an actual real estate inspection, consumers are provided with important information that is needed to make an impartial decision regarding whether the home should be purchased. By informing consumers and stressing the importance of a true real estate inspection, a significant reduction in the risk of future contractual disputes and legal complaints can be achieved to the benefit of all involved with such transactions.

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Justice Department Snares Real Estate Brokers, Mortgage Brokers, Lenders in Loan Frauds in Florida, California

Law enforcement officers in California and Florida have been busy breaking mortgage fraud cases over the past month.

In California, the Justice Department filed charges against 40 real estate brokers, mortgage brokers and lenders, alleging a conspiracy to originate \$110 million in fraudulent FHA-insured home mortgages.

The investigation was focused in a part of Los Angeles where FHA defaults are 50 percent above the national norm.

The department said three types of conspiracies were involved:

- * Fraudulent loan originations, in which unqualified borrowers were given fake financial documents, including wage statements, by real estate agents and mortgage loan brokers to obtain loans. The fraud helped generate commissions for the agents, but more buyers ended up in foreclosure with HUD taking the loss.
- * Land flipping, in which sellers, mortgage brokers, real estate agents, escrow officers and notaries would sell homes to straw buyers at inflated prices, often as much as \$150,000 above true value. The last buyer eventually defaults, but the line of sellers already have made their money.
- * Home improvement loans in which mortgage brokers or real estate agents use the names of unsuspecting borrowers to obtain loans on FHA-insured properties.

In another California case, HUD employee Karen L Christiansen was arrested and charged with taking \$80,000 in bribes from real estate broker/owner Hadi Kailani of Kailani Real Estate.

Christiansen allegedly sold Kailani more than \$2 million worth of HUD properties for \$700,000. Kailani also allegedly collected almost \$50,000 in commissions on those properties.

In Fort Lauderdale, Florida, another nine people have been indicted in a \$29 million mortgage fraud that also generated waves of foreclosures and evictions.

Mortgage broker James Christenson allegedly organized the scheme and laundered more than \$21 million through bank accounts he controlled.

He allegedly purchased properties through straw buyers who had been paid for the use of their names, credit histories and signatures. He also arranged for inflated appraisals on the properties.

Although collecting the rents on the properties, Christenson reportedly made no mortgage payments, letting the properties go into default.

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remember

You Must Notify the Division

--in Writing--

Within 10 Days of: :

- a change of personal address;
- a change of business address;
- a change of name;
- a change of personal or business telephone number
- a conviction of a criminal offense
- a filing of a personal or brokerage bankruptcy

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Division of Real Estate

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